IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 439 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

VARSHABEN BHARATBHAI PATEL

Versus

NATHUBHAI DULABHAI PATEL

Appearance:

MR NI DAVE for Petitioner
MR HARESH C PATEL for Respondent No. 1
MR ST MEHTA ADDL PP for Respondent No. 3

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 25/02/2000

ORAL JUDGEMENT

The learned advocates for the parties are not

present except the learned Additional Public Prosecutor who does not have any papers of this matter.

2. The present application is filed to quash and set aside the order passed by the Judicial Magistrate, First Class at Ankleshwar in Criminal Case No.1007/85. The impugned order is for issuing summons and subsequently non-bailable warrants against the accused for the complaint under Sections 420 and 114 of the Indian Penal Code. The original complaint is filed against two persons out of whom the present petitioner has filed the present application. While admitting the matter, further proceedings in Criminal Case No.1007/85 were stayed qua the present petitioner only. There is no information as to what has happened in the criminal case against the other accused. The original complainant, who is the respondent No.1, though served, has neither filed any reply affidavit nor anyone is present on his behalf.

3. Going through the original complaint and the statement of the plaintiff recorded thereunder, it appears that the present petitioner is joined in the criminal proceedings only on the allegation that she was the owner of the business run in the name and style of Varsha Electronics. It is also alleged that the other accused is holding power of attorney of the present petitioner. In these set of facts, the other allegations regarding commission of any crime are related to the other accused and, obviously, the present petitioner does not enter into the picture. The other submissions made in the petition remain uncontroverted.

4. In the circumstances as above, no case is made out against the petitioner to proceed further in a criminal complaint under Sections 420 and 114 of the Indian Penal Code. The learned Judicial Magistrate, First Class does not seem to have applied his mind to this aspect. Hence, the application is allowed. Criminal Case No.1007/85 pending before the learned Judicial Magistrate, First Class at Ankleshwar is quashed and set aside only as far as the present petitioner is concerned. Rule is made absolute with no order as to costs.

(KMG Thilake)
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